

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
WASHINGTON, D.C. 20544

**Agenda E-19 (Appendix A)**  
**Rules**  
**September 2006**

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**MEMORANDUM**

**DATE:** May 22, 2006 (Revised June 30, 2006)

**TO:** Judge David F. Levi, Chair  
Standing Committee on Rules of Practice and Procedure

**FROM:** Judge Carl E. Stewart, Chair  
Advisory Committee on Appellate Rules

**RE:** Report of Advisory Committee on Appellate Rules

**I. Introduction**

The Advisory Committee on Appellate Rules met on April 28, 2006, in San Francisco, California. The Committee approved proposed new Rule 25(a)(5).

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**II. Action Item**

The Advisory Committee is seeking final approval of proposed new Rule 25(a)(5).

**A. Introduction**

The Committee proposes to add a new Rule 25(a)(5) that addresses privacy concerns relating to court filings. New Rule 25(a)(5) will take a "dynamic conformity" approach, under which the privacy rules applicable below will also apply on appeal. In proceedings other than appeals from a district court, bankruptcy appellate panel, or bankruptcy court, privacy will be governed by new Civil Rule 5.2 (except that when an extraordinary writ is sought in a criminal case, new Criminal Rule 49.1 will govern).

### B. Text of Proposed New Rule and Committee Note

## Rule 25. Filing and Service

1           **(a) Filing.**

\* \* \* \* \*

(5) **Privacy Protection.** An appeal in a case whose privacy protection was governed by Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, or Federal Rule of Criminal Procedure 49.1 is governed by the same rule on appeal. In all other proceedings, privacy protection is governed by Federal Rule of Civil Procedure 5.2, except that Federal Rule of Criminal Procedure 49.1 governs when an extraordinary writ is sought in a criminal case.

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## Committee Note

**Subdivision (a)(5).** Section 205(c)(3)(A)(i) of the E-Government Act of 2002 (Public Law 107-347, as amended by Public Law 108-281) requires that the rules of practice and procedure be amended “to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically.” In response to that directive, the Federal Rules of Bankruptcy, Civil, and Criminal Procedure have been amended, not merely to address the privacy and security concerns raised by documents that are filed electronically, but also to



8                    appeal. In aAll other proceedings, privacy  
9                    protection is ~~are~~ governed by Federal Rule of Civil  
10                   Procedure 5.2, except that Federal Rule of Criminal  
11                   Procedure 49.1 governs when an extraordinary writ  
12                   is sought in a criminal case.

The Style Subcommittee suggested these changes out of concern that readers might not otherwise know the content of the trial-level rules referenced in Rule 25(a)(5). Judge Schiltz, then this Committee’s Reporter, argued that the changes were unnecessary, because Rule 25(a)(5)’s caption reads “Privacy Protection.” Judge Schiltz also argued that it was superfluous to specify that cases’ “privacy protection was governed by” the relevant trial-level rules – rather than just stating that the *cases* were governed by those rules – because the relevant trial-level rules govern nothing but privacy protection. For the same reason, Judge Schiltz feared that the added language might confuse readers by suggesting (incorrectly) that the cited trial-level rules also govern matters other than privacy protection. The Committee, cognizant of the policy to defer to the Style Subcommittee on matters of style, voted to adopt the Style Subcommittee’s changes but also to place Judge Schiltz’s comments before the Style Subcommittee.

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